

Senate Study Bill 3101 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON RAGAN)

A BILL FOR

1 An Act relating to vapor products and alternative nicotine
2 products, providing penalties, and including effective date
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 453A.1, Code 2014, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Alternative nicotine product*" means
4 a product, not consisting of or containing tobacco, that
5 provides for the ingestion into the body of nicotine, whether
6 by chewing, absorbing, dissolving, inhaling, snorting, or
7 sniffing, or by any other means. "*Alternative nicotine product*"
8 does not include cigarettes, tobacco products, or vapor
9 products, or a product that is regulated as a drug or device by
10 the United States food and drug administration under chapter V
11 of the federal Food, Drug, and Cosmetic Act.

12 NEW SUBSECTION. 26A. "*Vapor product*" means a noncombustible
13 product containing nicotine that employs a mechanical heating
14 element, battery, or circuit, regardless of shape or size, that
15 can be used to heat a nicotine solution, and includes but is
16 not limited to a cartridge or other container of such nicotine
17 solution, an electronic cigarette, an electronic cigar, an
18 electronic cigarillo, or an electronic pipe. "*Vapor product*"
19 does not include a product regulated as a drug or device by the
20 United States food and drug administration under chapter V of
21 the federal Food, Drug, and Cosmetic Act.

22 Sec. 2. Section 453A.2, subsections 1, 2, 3, and 8, Code
23 2014, are amended to read as follows:

24 1. A person shall not sell, give, or otherwise supply any
25 tobacco, tobacco products, alternative nicotine products, vapor
26 products, or cigarettes to any person under eighteen years of
27 age.

28 2. A person under eighteen years of age shall not smoke,
29 use, possess, purchase, or attempt to purchase any tobacco,
30 tobacco products, alternative nicotine products, vapor
31 products, or cigarettes.

32 3. Possession of ~~cigarettes or tobacco~~, tobacco products,
33 alternative nicotine products, vapor products, or cigarettes by
34 an individual under eighteen years of age does not constitute a
35 violation under this section if the individual under eighteen

1 years of age possesses the ~~cigarettes or tobacco~~, tobacco
2 products, alternative nicotine products, vapor products, or
3 cigarettes as part of the individual's employment and the
4 individual is employed by a person who holds a valid permit
5 under this chapter or who lawfully offers for sale or sells
6 ~~cigarettes or tobacco~~, tobacco products, alternative nicotine
7 products, vapor products, or cigarettes.

8 8. a. A person shall not be guilty of a violation of
9 this section if conduct that would otherwise constitute a
10 violation is performed to assess compliance with ~~cigarette and~~
11 tobacco, tobacco products, alternative nicotine products, vapor
12 products, or cigarette laws if any of the following applies:

13 (1) The compliance effort is conducted by or under the
14 supervision of law enforcement officers.

15 (2) The compliance effort is conducted with the advance
16 knowledge of law enforcement officers and reasonable measures
17 are adopted by those conducting the effort to ensure that
18 use of ~~cigarettes or tobacco~~, tobacco products, alternative
19 nicotine products, vapor products, or cigarettes by individuals
20 under eighteen years of age does not result from participation
21 by any individual under eighteen years of age in the compliance
22 effort.

23 b. For the purposes of this subsection, "*law enforcement*
24 *officer*" means a peace officer as defined in section 801.4 and
25 includes persons designated under subsection 4 to enforce this
26 section.

27 Sec. 3. Section 453A.4, subsection 1, Code 2014, is amended
28 to read as follows:

29 1. If a person holding a permit under this chapter or an
30 employee of such a permittee has a reasonable belief based on
31 factual evidence that a driver's license as defined in section
32 321.1, subsection 20A, or nonoperator's identification card
33 issued pursuant to section 321.190 offered by a person who
34 wishes to purchase ~~cigarettes or tobacco~~, tobacco products,
35 alternative nicotine products, vapor products, or cigarettes

1 is altered or falsified or belongs to another person, the
2 permittee or employee may retain the driver's license or
3 nonoperator's identification card. Within twenty-four hours,
4 the card shall be delivered to the appropriate city or county
5 law enforcement agency of the jurisdiction in which the
6 permittee's premises are located, and the permittee shall file
7 a written report of the circumstances under which the card was
8 retained. The local law enforcement agency may investigate
9 whether a violation of section 321.216, 321.216A, or 321.216C
10 has occurred. If an investigation is not initiated or probable
11 cause is not established by the local law enforcement agency,
12 the driver's license or nonoperator's identification card shall
13 be delivered to the person to whom it was issued. The local law
14 enforcement agency may forward the card with the report to the
15 state department of transportation for investigation, in which
16 case, the state department of transportation may investigate
17 whether a violation of section 321.216, 321.216A, or 321.216C
18 has occurred. The state department of transportation shall
19 return the card to the person to whom it was issued if an
20 investigation is not initiated or probable cause is not
21 established.

22 Sec. 4. Section 453A.5, subsection 1, Code 2014, is amended
23 to read as follows:

24 1. The alcoholic beverages division of the department of
25 commerce shall develop a tobacco compliance employee training
26 program not to exceed two hours in length for employees and
27 prospective employees of retailers, as defined in sections
28 453A.1 and 453A.42, to inform the employees about state and
29 federal laws and regulations regarding the sale of ~~cigarettes~~
30 ~~and tobacco~~, tobacco products, alternative nicotine products,
31 vapor products, and cigarettes to persons under eighteen
32 years of age and compliance with and the importance of laws
33 regarding the sale of ~~cigarettes and tobacco~~, tobacco products,
34 alternative nicotine products, vapor products, and cigarettes
35 to persons under eighteen years of age.

1 Sec. 5. Section 453A.36, subsection 7, Code 2014, is amended
2 to read as follows:

3 7. a. It shall be unlawful for a person other than a ~~holder~~
4 ~~of a retailer as defined in section 453A.1 or 453A.42 who holds~~
5 a valid retail permit, as applicable, to sell tobacco, tobacco
6 products, alternative nicotine products, vapor products, or
7 cigarettes at retail.

8 b. ~~No~~ A state permit holder shall not sell or distribute
9 cigarettes at wholesale to any person in the state of Iowa
10 who does not hold a permit authorizing the retail sale
11 of cigarettes or who does not hold a state permit as a
12 manufacturer, distributing agent, wholesaler, or distributor.

13 Sec. 6. Section 453A.36A, subsection 1, Code 2014, is
14 amended to read as follows:

15 1. ~~Beginning January 1, 1999, except~~ Except as provided in
16 section 453A.36, subsection 6, a retailer shall not sell or
17 offer for sale ~~cigarettes or tobacco, tobacco products, in a~~
18 ~~quantity of less than a carton,~~ alternative nicotine products,
19 vapor products, or cigarettes through the use of a self-service
20 display.

21 Sec. 7. Section 453A.39, Code 2014, is amended to read as
22 follows:

23 **453A.39 Tobacco ~~product~~, tobacco products, alternative**
24 **nicotine products, vapor products, and cigarette samples —**
25 **restrictions — administration.**

26 1. A manufacturer, distributor, wholesaler, retailer,
27 or distributing agent, or agent thereof, shall not give
28 away ~~cigarettes or tobacco, tobacco products, alternative~~
29 nicotine products, vapor products, or cigarettes at any
30 time in connection with the manufacturer's, distributor's,
31 wholesaler's, retailer's, or distributing agent's business or
32 for promotion of the business or product, except as provided in
33 subsection 2.

34 2. a. All cigarette samples shall be shipped only to a
35 distributor that has a permit to stamp cigarettes or little

1 cigars with Iowa tax. All cigarette samples must have a
2 cigarette stamp. The manufacturer shipping samples under this
3 section shall send an affidavit to the director stating the
4 shipment information, including the date shipped, quantity, and
5 to whom the samples were shipped. The distributor receiving
6 the shipment shall send an affidavit to the director stating
7 the shipment information, including the date shipped, quantity,
8 and from whom the samples were shipped. These affidavits shall
9 be duly notarized and submitted to the director at the time of
10 shipment and receipt of the samples. The distributor shall
11 pay the tax on samples by separate remittance along with the
12 affidavit.

13 **b.** A manufacturer, distributor, wholesaler, retailer, or
14 distributing agent or agent thereof shall not give away any
15 ~~cigarettes or tobacco~~, tobacco products, alternative nicotine
16 products, vapor products, or cigarettes to any person under
17 eighteen years of age, or within five hundred feet of any
18 playground, school, high school, or other facility when such
19 facility is being used primarily by persons under age eighteen
20 for recreational, educational, or other purposes.

21 **c.** Proof of age shall be required if a reasonable person
22 could conclude on the basis of outward appearance that a
23 prospective recipient of a sample may be under eighteen years
24 of age.

25 Sec. 8. Section 805.8C, subsection 3, Code 2014, is amended
26 to read as follows:

27 3. ~~Smoking violations~~ Violations related to smoking, tobacco,
28 tobacco products, alternative nicotine products, vapor products,
29 and cigarettes.

30 **a.** For violations described in section 142D.9, subsection 1,
31 the scheduled fine is fifty dollars, and is a civil penalty,
32 and the criminal penalty surcharge under section 911.1 shall
33 not be added to the penalty, and the court costs pursuant
34 to section 805.9, subsection 6, shall not be imposed. If
35 the civil penalty assessed for a violation described in

1 section 142D.9, subsection 1, is not paid in a timely manner,
2 a citation shall be issued for the violation in the manner
3 provided in section 804.1. However, a person under age
4 eighteen shall not be detained in a secure facility for failure
5 to pay the civil penalty. The complainant shall not be charged
6 a filing fee.

7 *b.* For violations of section 453A.2, subsection 1, by an
8 employee of a retailer, the scheduled fine is as follows:

9 (1) If the violation is a first offense, the scheduled fine
10 is one hundred dollars.

11 (2) If the violation is a second offense, the scheduled fine
12 is two hundred fifty dollars.

13 (3) If the violation is a third or subsequent offense, the
14 scheduled fine is five hundred dollars.

15 c. For violations of section 453A.2, subsection 2, the
16 scheduled fine is as follows and is a civil penalty, and the
17 criminal penalty surcharge under section 911.1 shall not be
18 added to the penalty, and the court costs pursuant to section
19 805.9, subsection 6, shall not be imposed:

20 (1) If the violation is a first offense, the scheduled fine
21 is fifty dollars.

22 (2) If the violation is a second offense, the scheduled fine
23 is one hundred dollars.

24 (3) If the violation is a third or subsequent offense, the
25 scheduled fine is two hundred fifty dollars.

26 Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
27 immediate importance, takes effect upon enactment.

28 Sec. 10. CODE EDITOR DIRECTIVE. The Code editor shall
29 modify the title of chapter 453A to read "Cigarette and Tobacco
30 Taxes and Regulation of Alternative Nicotine Products and Vapor
31 Products".

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill relates to the regulation of alternative nicotine

1 products and vapor products. The bill defines "alternative
2 nicotine products" and "vapor products" separately from
3 cigarettes and tobacco products under Code chapter 453A
4 (cigarette and tobacco taxes).

5 The bill includes alternative nicotine products and
6 vapor products under the prohibitions relating to persons
7 under legal age. Under the bill, a person shall not sell,
8 give, or otherwise supply any tobacco, tobacco products,
9 alternative nicotine products, vapor products, or cigarettes
10 to any person under 18 years of age; and a person under 18
11 years of age is prohibited from smoking, using, possessing,
12 purchasing, or attempting to purchase any tobacco, tobacco
13 products, alternative nicotine products, vapor products,
14 or cigarettes. However, possession of tobacco, tobacco
15 products, alternative nicotine products, vapor products, or
16 cigarettes by an individual under 18 years of age does not
17 constitute a violation if the individual under 18 possesses
18 the tobacco, tobacco products, alternative nicotine products,
19 vapor products, or cigarettes as part of the individual's
20 employment and the individual is employed by a person who
21 holds a valid permit or who lawfully offers for sale or sells
22 tobacco, tobacco products, alternative nicotine products,
23 vapor products, or cigarettes. Additionally, a person is
24 not guilty of a violation if conduct that would otherwise
25 constitute a violation is performed to assess compliance with
26 tobacco, tobacco products, alternative nicotine products, vapor
27 products, or cigarette laws under specified conditions.

28 The bill amends provisions relating to the suspected use of
29 a falsified driver's license or nonoperator's identification
30 card to purchase cigarettes and tobacco products, to also apply
31 to the purchase of tobacco, alternative nicotine products and
32 vapor products; and amends provisions relating to the tobacco
33 compliance employee training program developed by the alcoholic
34 beverages division of the department of commerce to address,
35 in addition to cigarettes and tobacco products, tobacco,

1 alternative nicotine products, and vapor products.

2 The bill provides that it is unlawful for a person other
3 than a retailer of cigarettes or tobacco products who holds
4 a valid retail permit to sell tobacco, tobacco products,
5 alternative nicotine products, vapor products, or cigarettes
6 at retail. The bill makes applicable to tobacco, alternative
7 nicotine products, and vapor products, in addition to tobacco
8 products and cigarettes, the prohibition against a retailer
9 selling or offering for sale these products through the use of
10 a self-service display. The bill includes tobacco, alternative
11 nicotine products, and vapor products in the prohibition
12 against giving away samples of these products to any person
13 under 18 years of age, or within 500 hundred feet of any
14 playground, school, high school, or other facility when such
15 facility is being used primarily by persons under age 18 for
16 recreational, educational, or other purposes.

17 The bill amends the headnote of the scheduled violations
18 provision relating to smoking to include violations relating
19 to smoking, tobacco, tobacco products, alternative nicotine
20 products, vapor products, and cigarettes.

21 The bill directs the Code editor to modify the title
22 of Code chapter 453A to read "Cigarette and Tobacco Taxes
23 and Regulation of Alternative Nicotine Products and Vapor
24 Products".

25 The bill takes effect upon enactment.